

APPEAL NO. 022671
FILED DECEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 26, 2002. The hearing officer resolved the issue before him by determining that the appellant's (claimant herein) compensable injury did not extend to include an injury to the cervical spine in the form of multiple level osteophyte formation and osseous formation. The claimant appeals, contending that the hearing officer's decision was contrary to the evidence; that the hearing officer failed to consider all of the evidence; that the hearing officer failed in his duty to develop the record; that the hearing officer violated her constitutional rights; that the hearing officer ignored administrative violations by the respondent (carrier); and that the hearing officer erred in failing to grant her requests for subpoenas. The carrier responds that the decision of the hearing officer was sufficiently supported by the evidence and should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The question of the extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the factual findings of the hearing officer. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Nor do we find a basis to reverse based upon the procedural and other errors alleged by the claimant. The hearing officer stated in his decision that he considered all of the evidence and there is no evidence to show that he did not. As far as the hearing officer's ruling on the subpoenas is concerned, we review these types of matters on an abuse of discretion standard and there has not been a showing that the hearing officer abused his discretion in denying the claimant's request. Nor has it been shown that the hearing officer failed to develop the record in this case. It was not the province of the hearing officer to rule upon alleged administrative violations by the carrier as these are matters for the Texas Workers' Compensation Commission's Division of Compliance and Practices. Finally, constitutional matters, including those of age discrimination, are outside of the purview of the Appeals Panel. See *generally* Texas Workers' Compensation Commission Appeal No. 91080, decided December 20, 1991.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ARGONAUT SOUTHWEST INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH A. YURKOVICH
1431 GREENWAY DRIVE, SUITE 450
IRVING, TEXAS 75038.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Margaret L. Turner
Appeals Judge